

THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re A & I Bolt and Nut, Incorporated

Serial No. 75/001,298

David F. Zinger of Sheridan Ross & McIntosh, P.C. for A & I Bolt and Nut, Incorporated.

Richard A. Straser, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

Before Simms, Hairston and Walters, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by A & I Bolt and Nut, Incorporated to register the mark SQUARE MAX for "metal threaded fasteners."¹

¹ Application Serial No. 75/001,298 filed October 3, 1995, based on a bona fide intention to use the mark in commerce. Applicant subsequently filed an amendment to allege a date of first use and first use in commerce of April 1996. At the Examining Attorney's request, applicant submitted a disclaimer of the word "SQUARE" apart from the mark as shown.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to the identified goods, so resembles the previously registered mark MAX as shown below,

for metal threaded fasteners² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.

At the outset, we note that the goods of applicant and registrant are identical. We will focus, therefore, as have applicant and the Examining Attorney, on the involved marks.

Applicant, in urging reversal of the refusal to register, argues that there are specific differences in the marks, i.e., the cited mark is in stylized form and does

² Registration No. 1,756,419 issued March 9, 1993.

not include the word "SQUARE." Also, applicant contends that marks consisting of or containing the term "MAX" are weak marks which are entitled to a limited scope of protection. In particular, applicant maintains that the term "MAX," as applied to fasteners, is highly suggestive, and is frequently used in marks for such goods. In this regard, applicant submitted a list of six registrations of marks which include the term "MAX" for various kinds of fasteners.³ Finally, applicant submitted the affidavit of David Carr, its chief financial officer, who states that he is aware of no instances of actual confusion.

After careful consideration of applicant's arguments, we nonetheless agree with the Examining Attorney that confusion is likely. In articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety." In re National Data Corp., 753 F.3d 1056, 224 USPQ 749, 751

³ Generally, the submission of a mere list of third-party registrations would be insufficient to make the registrations properly of record. However, the Examining Attorney who was handling the case at the time the list was submitted did not object thereto, and discussed the registrations in her Office Action. Under the circumstances, we will likewise consider the registrations.

(Fed. Cir. 1985). For instance, "that a particular feature is descriptive . . . with respect to the involved goods . . . is one commonly accepted rationale for giving less weight to a portion of a mark" 224 USPQ at 751.

In light of the descriptive significance of the word "SQUARE," the more prominent or distinguishing element of applicant's mark, when considered as a whole, is the term "MAX," which is virtually identical to registrant's mark "MAX" in stylized form. As the Examining Attorney notes, the word "SQUARE" in applicant's mark SQUARE MAX simply indicates that applicant's fasteners can be driven using a "square drive." Thus, the addition of this word to MAX does not serve to distinguish the marks. Also, the fact that registrant's mark is in stylized form is of little consequence since applicant, in seeking to register its mark in typed form, would be free to use stylization similar to that of registrant. When applicant's and registrant's marks are used in connection with identical goods, purchasers and potential purchasers are likely to believe that the metal threaded fasteners emanate from the same source, and that SQUARE MAX fasteners are a line of registrant's MAX fasteners.

In reaching our decision, we have not overlooked the suggestive nature of the term "MAX," when used in connection with fasteners. This fact, however, does not help to distinguish MAX and SQUARE MAX because the term "MAX," as used in both marks, conveys the same suggestive significance. Moreover, even weak marks are entitled to protection against the registration by a subsequent user of a substantially similar mark for identical goods.

With respect to the third-party registrations, we note that three of the registrations are for marks which contain "MAX" within the prefix "MAXI," i.e., MAXI-BIN, MAXICOIL, and MAXIHEAD. These marks create very different commercial impressions from registrant's mark MAX. Further, neither of the other three registered marks, i.e., ALLMAX, CHERRYMAX, and MAXLOX is as similar to registrant's mark as is SQUARE MAX.

Finally, we are not persuaded by applicant's assertion that there have been no instances of actual confusion. We note that at the time of Mr. Carr's affidavit, applicant had used its mark for only about eighteen months, a relatively short period of time. Also, we do not know the nature and extent of use by registrant of its mark. Thus, we do not know if there has been ample opportunity for confusion to have arisen, and in this ex parte setting,

there is no opportunity to hear from registrant. Also, we note that the involved goods are inexpensive, and it is possible that purchasers will not bother to report instances when they are confused by marks when buying inexpensive products.

Accordingly, we conclude that purchasers and potential customers familiar with the registered mark "MAX" in stylized form for metal threaded fasteners, would be likely to believe, upon encountering the substantially similar mark SQUARE MAX for identical goods, that the goods emanate from or are associated with the same source.

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Decision: The refusal to register is affirmed.

R. L. Simms

P. T. Hairston

C. E. Walters
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

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